

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In re Applications of)	MM Docket No. 93-88
EZ COMMUNICATIONS, INC.)	File No. BRH-910401C2
For Renewal of License of FM Radio)	
Station WBZZ(FM) on Channel 229B)	
at Pittsburgh, Pennsylvania)	
ALLEGHENY COMMUNICATIONS GROUP,)	File No. BPH-910628MC
INC.)	
For Construction Permit for)	
a New FM Broadcast Station on)	
Channel 229B at Pittsburgh,)	
Pennsylvania)	

To: The Commission

RECEIVED

MAY 10 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

APPLICATION FOR REVIEW

Allegheny Communications Group, Inc. (Allegheny), by its attorneys, now seeks Commission review of the order EZ Communications, Inc., DA 93-361 (released April 5, 1993) (HDO) to the extent that the HDO denied Allegheny's petition to deny the mutually exclusive renewal application of EZ Communications, Inc. (EZ).

A motion for leave to file this application for review is being filed simultaneously with this pleading. The question of law presented is whether the HDO erred in refusing to specify the five basic qualifications issues against EZ that Allegheny requested in its petition to deny. Review is

Both of the HDO's procedural arguments are utterly meritless. Allegheny provided the Commission with the arbitrator's opinion, which provided an exact quote of the January 22, 1988 broadcast, and contained detailed findings on the other broadcasts remarking on Ms. Randolph's sexual behavior. It is absolutely incorrect that Allegheny left the Commission to speculate as to the nature and context of the broadcasts. The arbitrator's opinion demonstrates that it was broadcast over WBZZ(FM) that Ms. Randolph was having promiscuous sex with various people on cruise ships, in Cape Cod, with members of a hockey team, and with the U.S. Marines. Moreover, EZ's opposition to Allegheny's petition made no serious attempt to contest the accuracy of the arbitrator's findings concerning what was broadcast over the air. As the HDO states (at ¶8), indecency is "language or material that, in context, depicts or describes in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs." Since the cited passages undoubtedly refer to sexual activity, the only remaining question is whether the references were patently offensive. The arbitrator's opinion (at P. 13) speaks to that point:

The conduct on the part of the disc jockeys was degrading, humiliating, and a serious invasion of her personal rights and dignity. I would find it unreasonable to require the grievant to have remained on the job after being subjected to such vile and lewd insults...

The fact that no other indecency complaint was filed against WBZZ is absolutely irrelevant. The Commission may not refuse to consider specific factual allegations in a petition to deny because those allegations have not previously been presented in a complaint. The Court of Appeals has held that the Commission is required to consider obscenity allegations in a renewal proceeding. Monroe Communications Corp. v. FCC, 900 F.2d 351, 357-358, 67 RR 2d 843, 847-848 (D.C. Cir. 1990). No rational basis exists for treating indecency differently.

The HDO's substantive discussion of the evidence of indecency is limited to the following:

As a final matter, even if we were to find that the 'joke' itself was indecent, we would be disinclined to designate an issue against EZ based on an isolated incident which apparently was never repeated. This is especially so in light of the evidence that upon learning of the 'joke,' management took immediate action by suspending the announcers responsible and investigating the incident.

HDO, ¶9. That discussion bears no relationship to reality. The January 22, 1988 broadcast was the last in a series of similar broadcasts that had taken place over a two year period. The "joke" was anything but an isolated incident. As for the station's reaction to the incident, the main reaction to the continuing abuse heaped upon Ms. Randolph was to fire her. The HDO conveniently ignores that fact, and an issue must be specified.

II. Sexual Discrimination

Paragraph 11 of the HDO proffers the unusual notion that sexual harassment that does not relate to the "recruiting, hiring, or promoting" of employees is not prohibited by the Commission's EEO rule. No authority is cited for that proposition because none exists. Section 73.2080(b) (4) of the Commission's rules requires all licensees to:

[c]onduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon...sex from its personnel policies and practices and working conditions... (Emphasis added).

Moreover, the HDO refuses to recognize that Ms. Randolph was fired for, in essence, failing to go along with the harassment. Thus, the incidents clearly did relate to the employment practices of EZ. The HDO is just wrong on this point.

The other purported rationale for not specifying an EEO issue is that the Commission is allegedly disinclined to specify issues when litigation is settled. That assertion is wrong both on the facts and on the law. The HDO ignores the fact that the arbitration proceeding and subsequent appeal in federal district court was never part of any settlement. Since the

arbitrator's appeal contains the detailed findings concerning EZ's misconduct, the HDO's rationale is inapplicable. Moreover, the Bureau's statement of the law is wrong. The Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1205, 59 RR 2d 801, 819-820 (1986) unambiguously states that an adjudication by a trier of fact will be ~~considered~~ *not* "during the pendency of an appeal." Even if, of course, the

He went on to say:

"Further, the plaintiff agrees that she will not file a complaint with the FCC. She will not assist anybody in filing a complaint with the FCC. She will in no way directly or indirectly assist anybody in filing a complaint."

The Judge explicitly stated that Ms. Randolph was paid for not filing a complaint. Clearly, the HDO is wrong.

Moreover, the HDO's analysis fails to consider that Ms. Randolph filed a complaint with the Commission in which she asked, "What action can I now take to have WBZZ's License Renewal Application put on hold until this matter is resolved?" A copy of this complaint is submitted as Attachment 1 to this pleading. In its June 15, 1989 response (Attachment 2 to this pleading), the Commission assured Ms. Randolph that it would "carefully review the operations of WBZZ-FM" when its renewal application was filed. In light of this evidence, the HDO's finding (at ¶15) that Ms. Randolph never threatened to file anything against WBZZ's renewal application is just plain wrong.

The HDO also states that entering into a settlement agreement in a civil case is not an abuse of process. Allegheny never argued that the settlement agreement, per se, was an abuse of process. Instead, it was the attempt to prevent Ms. Randolph from testifying, even in the face of a Commission subpoena, that constituted the abuse of process. The cases cited by Allegheny and by ¶14 of the HDO stand for the proposition that it is an abuse of process to obstruct the Commission and other parties from attempting to obtain relevant and necessary testimony from a witness. EZ has engaged in such conduct.

Moreover, while the HDO admits that "Allegheny has the right to gather all the information concerning EZ that it can..." (HDO, ¶15), it fails to note that EZ attempted to deny that right by having the court records sealed. As Allegheny demonstrated in its petition to deny, the only reason EZ could have wanted to have the records sealed was to prevent other parties from discovering information relevant to its qualifications. The fact that

Allegheny was able to obtain information before the record was sealed does not excuse EZ's misconduct. Furthermore, Allegheny cannot know what additional information it could have obtained if the record had not been sealed. The HDO also fails to consider that EZ also obstructed the Commission's (as well as Allegheny's) ability to obtain all necessary information. An issue must be specified.

IV. Character/Defamation Issue

Allegheny also sought a general issue to determine the effect of the final adjudications in the arbitration proceeding and the jury trial on EZ's qualifications. While the HDO refers to a request for a "civil misrepresentation" issue, the requested issue was actually somewhat broader.

The HDO denied the requested issue because "the litigation has ended in a settlement to the apparent satisfaction of the parties..." HDO, ¶13. As Allegheny has shown with respect to the sexual discrimination issue, that reasoning is both legally and factually incorrect.

It is important that the defamation EZ engaged in is particularly relevant to EZ's qualifications because it was repeatedly broadcast over WBZZ(FM). Programming is clearly the central purpose of a broadcast station. The use of a broadcast station to defame an individual is broadcast-related misconduct. Voce Intersectario Verdad America, Inc., 100 FCC 2d 1607, 1611, 58 RR 2d 445, 448 (Rev. Bd. 1985). Here, where the defamation was repeated extensively, substantial and material questions of fact exist concerning the

"... some form of memorandum including these items of information

LIZ RANDOLPH
314 Pennsview Court
Pittsburgh, PA 15205

April 27, 1989

EEO Branch
FCC
1919 M. Street N.W.
Room 7218
Washington, D.C. 20544

ATTENTION: Glenn Wolfe

Dear Mr. Wolfe:

Please allow this letter serve as formal notice regarding various acts of sex discrimination practiced by EZ Communications, Inc., the owner and operator of WBZZ-FM (Pgh., PA). I am also requesting that this letter be made part of the formal record in WBZZ's Application Renewal Request.

I am a newscaster with eleven (11) years experience. To make my story brief, I worked for WBZZ for two (2) years, eight (8) months. During the last two years of my tenure I was subjected, at various times to sexist, degrading on air comments by two male disc jockeys with whom I worked in the capacity of News Director.

These "humorous" statements implied that I am promiscuous, have sexually transmitted diseases, and have engaged in oral sex with large numbers of persons.

I complained about these attacks to the jocks involved, Jim Quinn and "Banana" Don Jefferson. I also complained at various times to the management of WBZZ but to no avail. They, meaning management and the jocks, were fully aware that these comments were affecting my ability to do my job by inducing panic attacks on the air; yet, the statements continued. In fact, after being hospitalized for this condition, when I returned to work, not only did the sexual comments continue, but Quinn and Banana (with the knowledge of management) started referring to my treatment on the air.

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Quinn and Banana's comments were often prerecorded - meaning the "jokes" which named me specifically were premeditated. Sworn testimony, which is enclosed, indicates that management and the jocks thought these comments "fair". The enclosed evidence also shows that they targeted me because I am a single woman. I must stress that these comments were clearly directed at me because of my sex (female), and would not have been considered "humorous" if directed at a man. Several listeners who heard these themes have written to me in disgust. One woman says, "It's difficult to imagine a man in a similar situation", with men adding that they found the comments misogynistic, sexist, and degrading.

The final straw in this series of ongoing discriminatory attacks came January 22, 1988. On that date, Quinn and Banana aired a pre-taped segment which named me specifically. The comment sought to convey the idea that I engage in so much oral sex and was so proficient in that regard, that I have a tattoo on my head which reads, "Don't pull on my ears, I know what I'm doing". Jim Quinn told me in advance on that day that something about me was about to be aired. I did not hear the comment air, but when it was played back to me afterwards, I became terribly upset, so much that I was unable to complete my final two newscasts. The station fired me a week later for alleged flagrant neglect of duty. I filed and won a union grievance for severance pay. The Arbitrator's Decision is enclosed for reference and I ask you to incorporate it in the renewal proceedings. WBZZ has appealed the ruling to Federal Court. A decision is due soon.

In addition, I have filed civil litigation against EZ Communications, Inc. alleging defamation, wrongful discharge, intentional and negligent infliction of emotional distress, and invasion of privacy. I have also filed a charge with the Human Relations Commission alleging sex discrimination under Pennsylvania law. Copies of the Complaint and charge are also enclosed.

In defense of their misconduct, WBZZ has alleged that I am trying to control their programming. This is not true - I am simply trying to stand up for my rights. No one, male or female, should be subjected to, and fired for, such blatant discrimination. The facts are that I was subjected to premeditated, outrageous attacks which named me specifically, and which were directed at me because I am a woman. When I protested and said that I would not tolerate being the target of such abuse, I was fired.

April 27, 1989
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What action can I now take to have WBZZ's License Renewal Application put on hold until this matter is resolved? In my opinion and the opinion of knowledgeable persons in this business, these comments have nothing to do with programming in the public's interest, convenience and necessity. Not only are the comments discriminatory against women, but one wonders whether they belong in "morning drive", a time when many children are listening. WBZZ is the station of choice for a majority of teenagers in the Greater Pittsburgh Market. The ratings show this. Many parents have told me that they have written the station and the FCC about this situation. I assume these letters are a part of the public file and will be taken into consideration during the FCC's license renewal process.

Again, please advise as to what further action I might take. I have enclosed the following documents for your files, which are not for further dissemination without my prior written authorization:

Exhibit

Reference

"A"	January 22, 1988 letter from Samuel P. Kamin to EZ Communication's President Alan Box and WBZZ General Manager, Tex Meyer
"B"	Amended Civil Complaint
"C"	Pennsylvania Human Relations Commission Complaint
"D"	Depositions: Quinn pages 38-39, 75-88, 93-93; Jefferson pages 44-70; Meyer page 21; Mallinger pages 140-145
"E"	Arbitrator's Decision
"F"	Press articles and letters

Thank you very much for your time and consideration.

Very truly yours,

LIZ RANDOLPH

LR:msb
Encs.

JUN 15 1989

83022
ATTACHMENT NO. 2

FCC MAIL BRANCH

JUN 15 1989 CS-109

Signed By
Mailed By

Liz Randolph
314 Pennsview Court
Pittsburgh, Pennsylvania 15205

Dear Ms. Randolph:

This refers to your letter of April 27, 1989 and subsequent telephone conversations informing the Commission that you have filed a sex discrimination complaint with the Pennsylvania Human Relations Commission and a civil suit with the Court of Common Pleas of Allegheny County, Pennsylvania against EZ Communications, Inc., licensee of Station WBZZ-FM, Pittsburgh, Pennsylvania.

Initially, it appears that you took the proper course of action by filing your complaint with the Pennsylvania Human Relations Commission and the Court of Common Pleas. The Commission and the Equal Employment Opportunity Commission (EEOC) does share jurisdiction regarding some aspects of equal employment opportunities in broadcasting. However, pursuant to the Memorandum of Understanding between the Federal Communications Commission and Equal Employment Opportunity Commission, 70 FCC 2d 2320 (1978), the Commission does not duplicate the fact-finding functions of agencies such as EEOC or the courts. Thus, it is the Commission's policy to refer cases involving complaints of discrimination to those agencies with authority to enforce laws prohibiting such discrimination. Under Title VII of the Civil Rights Act, the (EEOC) has the responsibility for investigating complaints of individual discrimination and seeking relief for aggrieved parties. The Commission does, of course, take cognizance of any final determination made by an agency or court involving a licensee. Accordingly, when a final determination has been rendered by the EEOC and/or courts with respect to your complaint, please notify us and we will take whatever action is deemed appropriate at that time.

The Commission does have the responsibility, however, of reviewing a broadcaster's overall performance to determine whether it has made reasonable, good faith efforts to serve the needs and interests of the public within the station's service area. Accordingly, the Commission will carefully review the operations of WBZZ-FM, during the processing of its application for renewal which will begin in December 1990. If it is your intention to file a petition to deny an application for renewal of a broadcast license or an informal objection, Section 31.2504 of the Commission's rules specifies that to be

the Commission may designate the renewal application for hearing. Pyle Communications (KIEZ/KWIC-FM, 4 FCC Rcd 1254 (1989)). Petitions that fail to meet the procedural requirements but raise a question concerning the licensee's EEO practices are reviewed as informal objections. To be considered an informal objection, the pleading is due before the FCC takes action on the application and must raise a substantial and material question of fact to warrant further inquiry. See Section 73.3587 of the Commission's Rules. If review reveals that deficiencies exist, the Commission will take appropriate action.

Thank you for your letter to the Commission. It will be associated with our confidential EEO broadcast licensee files. I trust that this has been responsive. Should you have additional questions, please call us at (202) 632-7069.

Sincerely,

Glenn A. Wolfe
Chief, EEO Branch
Enforcement Division
Mass Media Bureau

CL2
/z/queen/randolph

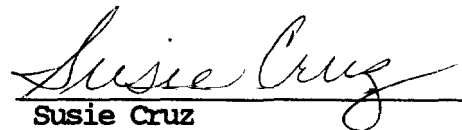
PPH

CERTIFICATE OF SERVICE

I, Susie Cruz, do hereby certify that on the 10th day of May 1993, a copy of the foregoing "Application for Review" was sent first-class mail, postage prepaid to the following:

Paulette Y. Laden, Esq.*
Robert A. Zauner, Esq.
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Susie Cruz

*HAND-DELIVERED